RULE 80I. SEARCH WARRANTS FOR SCHEDULE Z DRUGS

(a) Issuance of Warrant. A warrant may be issued under this rule by any justice or judge to search for and seize any schedule Z drug that is declared to be contraband and subject to seizure by 17-A M.R.S.A. § 1114. Rule 41(a), (c), (d), (e), (f) and (g) of the Maine Rules of Criminal Procedure shall govern the issuance and execution of any warrant authorized by this rule.

(b) Suppression of Evidence. In a proceeding under a statute which makes the possession of a schedule Z drug a civil violation a District Court Judge may, with the consent of both parties, entertain a motion to suppress evidence prior to trial. If a question concerning the admissibility of evidence has not been determined by motion to suppress prior to trial, upon appropriate objection, it shall be determined by the District Court Judge at the time of trial.

Advisory Committee's Note
November 15, 1976

This rule is intended to implement 17-A M.R.S.A. § 1114, a section of the new Maine Criminal Code providing that a Schedule Z drug under the Code, possession of which is a civil violation, may be seized as contraband. At present, marijuana is the only drug in that category. See 22 M.R.S.A. 2383. The rule is necessary, because M.R.Cr.P. 41(b)(3), which would otherwise permit issuance of a search warrant for such purposes, does not apply in noncriminal proceedings. See M.R.Cr.P. 1. Rule 80I merely authorizes issuance of a search warrant in such circumstances. The provisions of M.R.Cr.P. 41 govern details of issuance and execution.

The provisions of the rule are made applicable in the District Court by the simultaneous adoption of D.C.C.R. 80I.

RULE 80J. WARRANTS FOR SURVEYS AND TESTS

(a) Who May Apply. An official or employee of any State agency or any political subdivision of the State which agency or subdivision is authorized by law to acquire land through the exercise of eminent domain for the purpose of providing solid waste disposal facilities may apply to a District Court Judge in the division and district in which the land to be surveyed or tested is located for a

warrant under 4 M.R.S.A. § 180 to survey and conduct tests upon particularly described premises which are under consideration for condemnation.

(b) Contents of Application. The application shall be in the form of a sworn affidavit and shall set forth:

(1) the statutory authority pursuant to which the agency or subdivision is authorized to acquire lands by eminent domain, and a description of the premises to be surveyed or tested;

(2) the facts sufficient to demonstrate a compelling need for such warrant, which need may be demonstrated by an allegation that acquisition of the land in issue is or may be necessary in order for the agency or municipality to comply with state law or regulations or for protection of the public safety, health or welfare;

(3) a statement that the applicant has requested permission from the owner of the premises to conduct such survey or test and such permission has been denied;

(4) a statement that the applicant has at least 3 days in advance of the presentation of the application given written notice to the owner and occupant of the land of the time and place at which the applicant intends to present the application to the court and the right of the owner and occupant to be present and to be heard thereat.

(c) Issuance. Upon a finding of compelling need the District Court Judge shall issue the warrant to the applicant.

(d) Contents. The warrant shall specify the grounds of compelling need, the land to be surveyed or tested, the methods to be employed and the persons authorized to conduct the same.

(e) Execution. The warrant shall be executed in compliance with the provisions of Title 4 M.R.S.A. § 180.

(f) Return. Not later than 60 days after execution of the warrant the person executing it shall file a return with the Court from which the warrant issued setting forth the date and time of the inspection and the results of the inspection.

RULE 80J. WARRANTS FOR SURVEYS AND TESTS

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(b) Contents of Application. The application shall be in the form of a sworn affidavit and shall set forth:

(1) the statutory authority pursuant to which the agency or subdivision is authorized to acquire lands by eminent domain, and a description of the premises to be surveyed or tested;

(2) the facts sufficient to demonstrate a compelling need for such warrant, which need may be demonstrated by an allegation that acquisition of the land in issue is or may be necessary in order for the agency or municipality to comply with state law or regulations or for protection of the public safety, health or welfare;

(3) a statement that the applicant has requested permission from the owner of the premises to conduct such survey or test and such permission has been denied;

(4) a statement that the applicant has at least 3 days in advance of the presentation of the application given written notice to the owner and occupant of the land of the time and place at which the applicant intends to present the application to the court and the right of the owner and occupant to be present and to be heard thereat.

(c) Issuance. Upon a finding of compelling need the District Court Judge shall issue the warrant to the applicant.

(d) Contents. The warrant shall specify the grounds of compelling need, the land to be surveyed or tested, the methods to be employed and the persons authorized to conduct the same.

(e) Execution. The warrant shall be executed in compliance with the provisions of Title 4 M.R.S.A. § 180.

(f) Return. Not later than 60 days after execution of the warrant the person executing it shall file a return with the Court from which the warrant issued setting forth the date and time of the inspection and the results of the inspection.

RULE 80K. LAND USE VIOLATIONS

(a) Applicability. Except as otherwise provided in this rule, these rules shall apply to proceedings in the District Court involving alleged violations of land use laws and ordinances, whether administered and enforced primarily at the state or the local level, including but not limited to, those statutes, ordinances, codes, rules and regulations set forth in 4 M.R.S.A. § 152(6).

(b) Commencement of Proceedings; Service.

(1) *In General.* A proceeding under this rule shall be commenced by one of the following methods:

(A) A Land Use Citation and Complaint may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule and served upon the alleged violator within the state by any certified municipal official, any certified employee of the Department of Environmental Protection, or any other official authorized to serve civil process to enforce a statute, ordinance, code, rule or regulation to which this rule applies, if such official has reasonable grounds to believe that a violation of any provision of law as to which the official is authorized to serve process and to which this rule applies has been or is being committed. Service under this subparagraph shall be made upon an individual by delivering a copy of the Land Use Citation and Complaint to the individual personally and, if the alleged violator is an infant or incompetent person, personally to the appropriate individual specified in Rule 4(d)(2) or (3) of these rules. Service under this

subparagraph shall be made upon any other entity by delivering a copy of the citation personally to one of the appropriate individuals specified in Rule 4(d)(4)-(14) of these rules.

(B) A Land Use Citation and Complaint may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule by any public official who has reasonable grounds to believe that a violation of any provision of law that the official is authorized to enforce and to which this rule applies has been or is being committed. The complainant shall transmit the Land Use Citation and Complaint to any officer or person authorized to serve civil process under Rule 4(c) of these rules, who may serve it, or cause it to be served, upon the alleged violator by any method provided in Rule 4(d), (e), (f), (g), or (j) of these rules.

(C) In any proceeding under this rule in which a temporary restraining order is sought, the original of a Land Use Citation and Complaint, filled out as prescribed in paragraph (2) of subdivision (c) of this rule may be filed with the court by any person authorized under subdivision (h) of this rule to represent the plaintiff, or by the plaintiff's attorney, if such person has reasonable grounds to believe that a violation of any provision of law as to which the person has such authority is being committed and that immediate and irreparable injury, loss, or damage will result from such violation before the alleged violator can be heard personally or by counsel in opposition to the order. The person filing the Land Use Citation and Complaint shall, at the earliest opportunity, serve, or cause to be served, a copy of it on the alleged violator by any method provided in subparagraph (A) or (B) of this paragraph, together with notice of the hearing on the preliminary injunction.

(2) *Additional Service on Property Owner.* When the alleged violator is not the owner of the property on which the violation is alleged to have occurred or is occurring, the person making service on the alleged violator shall serve, or cause to be served, a copy of the Land Use Citation and Complaint upon the owner of the property by any appropriate method provided in Rule 4 of these rules.

(3) *Return of Service.* As soon as practicable after service upon the alleged land use violator, and the property owner if appropriate, the person making service shall cause the original of the Land Use Citation and Complaint to be filed with the court, together with the appropriate proof of service as provided in Rule 4(h) or (j) of these rules.

(4) *Proceedings in Name of Municipality or State.* All proceedings arising under the provisions of locally administered and enforced laws and ordinances or regulations shall be brought in the name and to the use of the municipality. All proceedings arising under laws administered or enforced by the State shall be brought in the name of the State.

(c) Content of Land Use Citation and Complaint.

(1) A Land Use Citation and Complaint that is to be served as provided in subparagraph (1)(A) or (B) of subdivision (b) of this rule shall contain the name and address of the alleged violator; the name and address of the property owner if different; the time and place of the alleged violation or, if they are not known, the time and place at which it was first observed by the complainant; a brief description of the alleged violation; a summary of the law or ordinance provision which is alleged to have been violated, including the penalties for violation; if a preliminary injunction is sought, a statement to that effect; the time, date, and place the alleged violator is to appear in court; where applicable, a statement that the alleged violator was advised of the violation; the signature and title of the complainant; and the signature of the alleged violator acknowledging receipt of the citation and complaint or a statement that the alleged violator refused to sign, or was unable to sign. If the violation alleged is of a state agency rule or a municipal ordinance or regulation, an attested or certified copy of the section or sections alleged to have been violated, together with a statement describing the place where the complete text may be obtained, shall be attached to the original of the Land Use Citation and Complaint. The Land Use Citation and Complaint shall notify the alleged violator that in the event of failure to appear on the date specified, a judgment by default may be entered.

(2) A Land Use Citation and Complaint that is to be filed with the court as provided in subparagraph (1)(C) of subdivision (b) of this rule shall contain the matters provided in paragraph (1) of this subdivision and a statement that a temporary restraining order is sought. It shall be accompanied by the affidavit and the certificate required by Rule 65(a) of these rules.

No other summons, complaint, or pleading shall be required of the municipality or the State, but motions for appropriate amendment of the Land Use Citation and Complaint shall be freely granted.

(d) Temporary Restraining Order and Preliminary Injunction: Security. The applicant for a temporary restraining order or a preliminary injunction under this rule shall not be required to give security as a condition upon the issuance thereof.

(e) Pleadings of Defendant.

(1) *Oral.* The alleged violator shall appear at the time and place specified, either personally or by counsel, and shall answer to the complaint orally.

(2) *No Joinder.* Proceedings pursuant to this rule shall not be joined with any action other than another proceeding pursuant to this rule, nor shall an alleged violator file a counterclaim or cross-claim.

(f) Venue. A land use violation proceeding under this rule shall be brought in the division in which the violation is alleged to have been committed.

(g) Discovery. Discovery shall be had only by agreement of the parties or by order of the court on motion for good cause shown.

(h) Authority of Complainant. A person who is not an attorney may represent a municipality under 12 M.R.S.A. § 4812-C(2), 30-A M.R.S.A. § 4221(2), or 30-A M.R.S.A. § 4452(1), or the State under 38 M.R.S.A. § 342(7), if the person files with the court when first appearing a written authorization from the municipal officers or the Commissioner of the Department of Environmental Protection, as appropriate, and a current certificate of familiarity with court procedures awarded under a program established by the Commissioner of Human Services as provided in 30-A M.R.S.A. § 4221(2).

(i) Standard of Proof. Adjudication of an alleged land use violation shall be by a preponderance of the evidence.

(j) Appeal. A party entitled to appeal may do so as in other civil actions.

(k) Alternative Dispute Resolution: Alternative Dispute Resolution, as agreed to by the parties or as required by law, shall be conducted pursuant to the processes specified in Rule 92.

Advisory Committee's Notes

February 15, 1996

Rule 80K(h) is amended to correct obsolete statutory references.

Advisory Committee's Notes
1993

Rule 80K(b)(1)(B) is amended to eliminate the procedure under which a District Court clerk could fill out and deliver for service a Land Use Citation and Complaint upon examination of the complainant and any witnesses and a finding of reasonable grounds to believe that a land use violation had been committed. This provision represents an unnecessary step for land use enforcement officials who are not authorized or may not wish to make service and imposes an undue burden upon clerks who may have difficulty in applying the standard. Under the amended rule, if an official with reasonable grounds cannot, or does not wish to, make service in person under Rule 80K(b)(1)(A), the official may transmit the process directly to an officer or other person authorized to serve process under Rule 4(c), and service may be had by one of the methods of service of civil process provided by Rule 4.

Rule 80K(c) is amended by deleting former paragraph (2) providing for the content of a citation and complaint filled out by the clerk and by renumbering former paragraph (3) as paragraph (2).

Comparable amendments are being made simultaneously in Rules 80F(b) and 80H(b) and (c).

Advisory Committee's Notes

1990

Rule 80K(b)(l)(A) is amended to simplify and clarify the way in which individuals authorized to serve process in land use violation proceedings are identified. The statutory provisions in the Rule as originally promulgated have been repealed and replaced. *See*, *e.g.*, former 12 M.R.S.A. § 4812-C(2), now 38 M.R.S.A. § 441; former 30 M.R.S.A. § 4966, now 30-A M.R.S.A. § 4506. The amendment describes in generic terms those categories of state and local officials originally intended to be empowered to serve process. These individuals must still be certified under the statute and rule and must have specific statutory authority to serve process in the types of actions to which the rule applies. These include certain land use violations by virtue of the incorporation of 4 M.R.S.A. § 152(6) in Rule 80K(a), as well as other proceedings. *See*, *e.g.*, 38 M.R.S.A. § 480-R (game wardens and marine patrol officers in natural resource violations).

Advisory Committee's Notes
1987

Rule 80K(b)(2) is amended to eliminate the provision for service upon the individual upon whom property taxes are assessed in the case of inability to find a non-violator owner. The various forms of substituted service upon the owner provided by M.R. Civ. P. 4 as incorporated in Rule 80K(b)(1)(A), (B), are more effective and constitutionally appropriate means of giving notice to the absent owner.

Rule 80K(c)(l) is amended to provide that only a copy of the section or sections of an agency rule or municipal ordinance or regulation that has been violated need be attached to the Land Use Citation and Complaint for service, although the complaint must also contain a statement informing the defendant where he may obtain the complete text. The amendment reflects the fact that many regulations and ordinances are of a bulk that makes inclusion in the complaint impracticable.

Advisory Committee's Notes
1984

Rule 80K is added to implement 1983 Laws, ch. 796, enacted by the 111th Legislature effective July 25, 1984. The basic purpose of the act, which was originally proposed by the Legislature's Commission on Local Land Use

Violations, is to assure the more effective and efficient enforcement of provisions of state and local law pertaining to land use and environmental protection.

The act achieves this purpose in two principal ways: (1) 4 M.R.S.A. § 152 is amended to vest in the District Court equitable jurisdiction in proceedings under the principal statutory land use and environmental protection provisions and regulations and ordinances adopted pursuant thereto; (2) 4 M.R.S.A. § 807 is amended to provide that appearance in court by certain authorized officials representing a municipality or the state in proceedings under those provisions is not the unauthorized practice of law. Other provisions of the act grant to certain state and local officials land use enforcement powers, including powers to serve civil process and represent the municipality when authorized in land use violation proceedings, and consolidate and make uniform the remedies and penalties for such violations.

Rule 80K, which is based on a draft prepared by the Commission, is intended to provide a summary procedure to implement the provisions of Chapter 796. The procedure is similar in approach to that provided for traffic infractions under M.D.C.Civ.R. 80F and civil violations under M.D.C.Civ.R. 80H.

Rule 80K(a) sets forth the basic proposition that the District Court Civil Rules are generally applicable to proceedings for violations of land use laws as to which the District Court has jurisdiction under 4 M.R.S.A. § 152(6). The general applicability of the District Court Civil Rules to these proceedings is limited and controlled by the specific provisions of Rule 80K. Proceedings to which the rule is applicable, as set forth in 4 M.R.S.A. § 152(6), include, but are not limited to,

> The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A; minimum lot size law, Title 12, sections 4807 to 4807-G; shoreland zoning ordinances adopted pursuant to Title 12, sections 4811 to 4817; the Alteration of Rivers, Streams and Brooks law, Title 12, sections 7776-7780; the plumbing and subsurface wastewater disposal rules adopted by the Department of Human Services pursuant to Title 22, section 42; laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648; local ordinances pursuant to Title 22, section 2642; local ordinances adopted pursuant to Title 30, section 1917; local building codes adopted pursuant to Title 30, sections 1917 and 2151; Title 30, chapter 215, subchapter 1, automobile junkyards and subchapter X, regulation and inspection of plumbing; Title 30, section 4359,

> malfunctioning domestic sewage disposal units; Title 30, section 4956, the subdivision law, and local subdivision ordinances adopted pursuant to Title 30, section 1917 and subdivision regulations adopted pursuant to Title 30, section 4956; local zoning ordinances adopted pursuant to Title 30, section 1917 and in accordance with Title 30, section 4962; the Great Ponds Act, Title 38, sections 386 to 396; the Alteration of Coastal Wetlands Act, Title 38, sections 471 to 476 and 478; and the Site Location of Development Act, Title 38, sections 481 to 485 and 488 to 490.

This jurisdiction is expressly stated by 4 M.R.S.A. § 152(6) to be concurrent with that of the Superior Court. No summary procedure has been established for the Superior Court, however a land use violation proceeding brought in that court will be subject to the general provisions of the Maine Rules of Civil Procedure. Note that, in contrast to traffic infraction proceedings under M.D.C.Civ.R. 80F and civil violation proceedings under M.D.C.Civ.R, 80H, land use violation proceedings may be removed to the Superior Court under M.D.C.Civ.R. 73(h).

Rule 80K(b) provides three methods by which a proceeding under the summary provisions of this rule must be commenced and gives details of the manner of serving process under each. The rule is similar to M.D.C.Civ.R. 80F(b) and 80H(b). Under Rule 80K(b)(1)(A) a state or local land use enforcement officer who is authorized to serve civil process under the applicable statutory provision may make personal service of the Land Use Citation and Complaint within the state upon an alleged violator or his appropriate agent for the receipt of process if the officer has reasonable grounds to believe that a provision of law within his authority has been violated. Appropriate provisions of M.R. Civ. P. 4(d) are incorporated by reference. The Land Use Citation and Complaint is Official Form 2H, the content of which is prescribed by Rule 80K(c).

Rule 80K(b)(1)(B) provides an alternate means of commencing a land use violation proceeding by service, to be used either when service cannot be accomplished by a land use enforcement officer authorized by statute or when service must be made other than by delivery in hand within the state to the alleged violator or his appropriate agent. In such a case, any state or municipal official charged with enforcement of a state or local land use provision may make complaint to a District Court clerk. If the clerk finds "reasonable grounds" to believe that a violation has taken place, the clerk is to issue a Land Use Citation and Complaint, which then may be served by any person authorized to serve civil process under M.R. Civ. P. 4(c). Since that rule permits service not only by

sheriffs, their deputies, and constables, but by other persons "authorized by law," service under Rule 80K(b)(1)(B) may be made by a state or local land use enforcement officer having the requisite statutory authorization. The net effect of subparagraph (B) is to assure the independent scrutiny of a representative of the Judicial Department in any case where a land use enforcement officer or other official is seeking the aid of another type of officer to serve process or in which a land use enforcement officer wishes to serve process by a means other than in hand delivery within the state.

Rule 80K(b)(1)(C) permits commencement of a land use violation proceeding by filing with the court when a temporary restraining order is sought. This alternative is made available in such a case because the essence of a temporary restraining order proceeding is the inability to give timely notice. If such notice can be given, the proceeding in effect becomes one for a preliminary injunction, and service may be accomplished as provided in Rule 80K(b)(1)(A) or (B). *See* 2 Field, McKusick and Wroth, *Maine Civil Practice* §§ 65.2-65.4 (2d ed. 1970). The proceeding for a temporary restraining order may be commenced under this subparagraph only by a land use enforcement officer who has the specific authorization of the municipal officers or appropriate state official to represent the municipality or state in court under the special provisions of 4 M.R.S.A. § 807 as amended, or by an attorney for the plaintiff. *See* Rule 80K(h). The officer must have reasonable grounds to believe not only that a violation has been committed but that immediate and irreparable harm will result. As in any proceeding for a temporary restraining order under M.R. Civ. P. 65(a), the Land Use Citation and Complaint must be accompanied by a separate affidavit to specific facts showing irreparable harm. A certificate setting forth the reasons why notice cannot be given must also be filed. *See* Rule 80K(c)(3). When a proceeding is commenced under this subparagraph, a copy of the papers filed and a notice of the hearing on the preliminary injunction must be served on the alleged violator as soon as possible.

Rule 80K(b)(2) provides that when the alleged violator is not the land owner, as for example when a lessee or contractor is causing a problem, a copy of the Land Use Citation and Complaint is to be served upon the land owner. The purpose of this provision is to provide notice to the property owner so that he may intervene to protect his own interests. Unless the property owner is made a party defendant by appropriate allegation in the original or amended Land Use Citation and Complaint, he is not bound by the judgment by virtue of this service. Of course, by virtue of M.R. Civ. P. 65(d) a property owner who was a person "in

active concert or participation with" a party defendant would be bound by a temporary restraining order or injunction of which he had received actual notice.

Rule 80K(b)(3) incorporates the proof of service requirements of M.R. Civ. P. 4(h) and (j)(2). The reference in Rule 4(h) to "plaintiff's attorney" should be understood as referring to any enforcement officer authorized to represent the state or a municipality under Rule 80K(h).

Rule 80K(b)(4) is taken from M.D.C.Civ.R. 80H(b). It carries forward the intent of the last sentence of 30 M.R.S.A. § 4966, enacted by 1983 Laws, ch. 796. Note that under 12 M.R.S.A. § 4815, the Attorney General or a district attorney may enforce shoreland zoning ordinances on behalf of the state. In such a case, the effect of Rule 80K(b)(4) is that such proceedings are brought in the name and to the use of the state, rather than of the municipality.

Rule 80K(c), which is similar to M.D.C.Civ.R. 80F(c), 80H(c), sets forth the required contents of the Land Use Citation and Complaint. To insure uniformity of practice throughout the state, a new District Court Civil Form 2H is being promulgated simultaneously with the rule. This form, which will be made available in printed format, should be used for all proceedings under Rule 80K.

Rule 80K(c)(1) sets forth the basic requirements. Note that, if the proceeding is for a violation of a state agency regulation or municipal ordinance, a certified copy of the provision in question must be attached to the Land Use Citation and Complaint. This requirement is imposed as an aid in proving provisions of law which are not the subject of judicial notice. Service of the certified copy upon the alleged violator provides notice to him of the source and authority of the provision in question, and filing with the court assures that the copy is available to be offered in evidence. The requirement does not relieve the plaintiff of the obligation to offer the certified copy formally in evidence and to sustain his burden of proof that the copy is what it purports to be. *See* 30 M.R.S.A. §§ 2154, 2155; Field & Murray, *Maine Evidence* § 201.1 (1976). Rule 80K(c)(2) contains additional matter intended to adapt the form to the situation where it is issued by the clerk rather than an enforcement officer. Rule 80K(c)(3) adds the further specific requirement for a proceeding in which a temporary restraining order is sought that the affidavit of facts showing irreparable harm and the certificate concerning reasons for lack of notice required by M.R. Civ. P. 65(a) be filed with the Land Use Citation and Complaint.

Rule 80K(d) varies M.R. Civ. P. 65(c) by eliminating the requirement of security as a condition upon issuance of a temporary restraining order or preliminary injunction. This requirement was deemed unnecessary in light of the presumed financial responsibility of the state and its municipalities, who will be the only plaintiffs under this rule. In other respects, M.R. Civ. P. 65 covers injunctive relief by virtue of M.D.C.Civ.R. 65.

Rule 80K(e) is patterned on M.D.C.Civ.R. 80F(d), 80H(d). Consistent with the summary procedure contemplated by Rule 80K, subdivision (e) provides that the only responsive pleading required or permitted is the oral answer of the alleged violator, to be given in open court on the return date specified in the Land Use Citation and Complaint. The only joinder permitted under the rule is of other land use violation proceedings, and no counterclaim or cross-claim is to be filed. The rule contemplates that at the appearance of the defendant, if issues of law or fact are raised by the pleadings, the court will at that time set whatever hearing schedule is appropriate, whether on the day of the initial appearance or a later date. If the answer raises no issues, the case is ripe for judgment. *See* 2 Field, McKusick, and Wroth, *Maine Civil Practice*, §§ 180F.3, 180H.3, (2d ed. 1970, Supp. 1981).

Rule 80K(f) limits venue to the division of the District Court in which the violation is alleged to have been committed. *See* M.D.C.Civ.R. 80F(e), 80H(e).

Under Rule 80K(g) discovery may be had only by agreement or by court order on a showing of good cause. *See* M.D.C.Civ.R. 80F(f), 80H(f).

Rule 80K(h) makes clear that a non-lawyer state or municipal enforcement officer who is authorized to represent the state or a municipality under one of the statutory authorizations recited in the rule must file in the proceeding both written authorization from the appropriate officials and a certificate indicating that he has completed a current program of familiarization with court procedure conducted by the Commissioner of Human Services under the authority of 30 M.R.S.A. § 3222(2).

Rule 80K(i) provides that the standard of proof in land use violation proceedings shall be proof by a preponderance of the evidence, the usual standard in civil actions. *See* M.D.C. Civ. R. 80F(h), 80H(h).

Rule 80K(j) provides for appeal from decisions in land use violation proceedings as in other civil actions in the District Court. *See* M.D.C.Civ.R. 73(a). Compare M.D.C. Civ. R. 80F(j), 80H(j).

Note that no special provision is made in the rule for costs, because attorney fees, expert witness fees, and costs are provided by statute. 30 M.R.S.A. § 4966(3)(D).

RULE 80L. JURY TRIAL DE NOVO IN SMALL CLAIMS APPEALS TO THE SUPERIOR COURT

(a) Applicability. This rule governs proceedings in jury trials de novo on appeal to the Superior Court from judgments of the District Court in small claims actions. The other provisions of the Rules of Civil Procedure do not apply to such proceedings except as provided in this rule.

(b) Scope; Service and Filing of Papers; Time; Motions. Rules 1, 2, 5, 6, 7(b), 11, and 15(b) of these rules apply to jury trials de novo in small claims appeals, so far as applicable. All notices given to the defendant shall be sent by ordinary mail addressed to the post office address of the defendant set forth on the notice of appeal.

(c) Pretrial and Trial Proceedings.

(1) *Determination on Affidavits.* When the record in a small claims appeal in which jury trial de novo has been demanded is received in the Superior Court, the clerk shall immediately notify the parties. The plaintiff may, within 10 days after the mailing of such notification, file a counteraffidavit or affidavits meeting the requirements of Rule 56(e), together with a brief statement of the grounds of any cross appeal for which a notice was filed under Rule 11(a) of the Maine Rules of Small Claims Procedure. The court shall thereupon review the affidavits of both parties, together with the entire record on appeal, and shall determine whether the defendant's affidavits are adequate and, if so, whether there is a genuine issue of material fact as to which there is a right to trial by jury.

(2) *Genuine Issue of Fact: Further Pretrial Proceedings; Assignment for Trial.* If the court finds that defendant has shown in light of the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall either direct the clerk immediately to place the action

upon a jury trial list maintained in accordance with Rule 40(a) or shall order the parties to file pretrial memoranda containing specified information or to appear for a pretrial conference or to file memoranda and appear for a conference. After review of the pretrial memoranda or at the conclusion of the conference, the court shall direct the clerk to place the action upon a jury trial list. Scheduling of actions for trial shall be at the direction of the court, as provided in Rule 40(a).

If either party intends to offer witnesses or exhibits not offered at the trial in the District Court, that party shall file a list of the names and addresses of such witnesses and a brief description of such exhibits within 10 days after notification that the action has been placed upon a jury trial list or, if pretrial memoranda or a pretrial conference have been ordered, at the time set by the court for such memoranda or conference. The opposing party may file a similar list and description in reply within 10 days, or as ordered by the court. No witness or exhibit may be offered in the Superior Court unless it was offered in the District Court or appears on a list filed in accordance with this paragraph.

(3) *No Genuine Issue of Fact: Disposition.* If the court finds that defendant has not shown in light of all the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall enter judgment dismissing the appeal, and further proceedings shall be had as provided in subdivision (d) of this rule; provided that, if either party has raised an independent question of law in the notice of appeal, the court shall review the record pertaining to it. If the court finds that a properly raised question of law is material to a legal claim or defense, the appeal shall proceed as provided for appeals on questions of law in Rule 11 of the Maine Rules of Small Claims Procedure.

(4) *Jury Trial.* An action placed upon a jury trial list shall be tried by jury. If the defendant withdraws the demand for jury trial in a writing filed with the clerk before the date on which the jury is to be empanelled, or if the court upon its own initiative at any time finds that no right to trial by jury of any issue exists under the Constitution or statutes of the State of Maine, the appeal shall be dismissed or proceed on a material question of law, as provided in paragraph (3) of this subdivision.

(5) *Continuances; Dismissal.* Rules 40(b) and (c) and 41 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

(6) *Evidence.* Rules 43, 44, 44A, 45, and 46 of these Rules, and the Maine Rules of Evidence, apply to jury trials de novo in small claims appeals, so far as applicable.

(7) *Jurors; Majority Verdict; Submission to the Jury.* Rules 47, 48, 50, and 51 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

(d) Judgment.

(1) *Rules Applicable.* Rules 54, 54A, 55, 58, 59, 60, 61, 62, and 63 of these rules apply to jury trials de novo in small claims appeals so far as applicable.

(2) *Amount of Judgment.* In no event shall the judgment entered exceed the statutory amount exclusive of interest and costs.

(3) *Interest.* A money judgment entered on a verdict shall bear interest at the post-judgment rate provided by law only from the date of the entry of judgment in the Superior Court.

(4) *Mandate.* Upon entry of judgment in the Superior Court, the court shall thereupon remand the case to the District Court from which it originated for entry of a like judgment, and for any further proceedings.

(e) Appeal to the Law Court. A party entitled to appeal to the Law Court from a decision of the Superior Court may do so as in other civil actions.

(f) Miscellaneous Provisions. Rules 77, 78, 79, 81, 82, 83, 84, 85, 86, 89, 90, and 91 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

Advisory Committee's Notes
January 1, 2001

Rule 80L(e) is amended to remove the reference to specific appeal rules numbers for appeals from Superior Court to the Law Court and substitutes a general reference as appears in some other rules. *See e.g.*, M.R. Civ. P. 80K(j).

Advisory Committee's Notes

May 1, 1999

Rule 80L(d)(2) and Small Claims Rule 3(d) are amended to remove outdated references to statutory jurisdictional limits. Instead of a specific number, the rules are amended to refer to "the statutory amount" which means the jurisdictional limit set in 14 M.R.S.A. § 7482. That limit is now $4,500.00.

Advisory Committee's Notes
1990

Rule 80L(c)(7) is amended to eliminate the specific limitation of closing argument to 15 minutes unless otherwise ordered. This change is consistent with the recent amendment of Rule 51 allowing the court to set the time for argument in each case. When Rule 80L(c)(7) was originally promulgated, Rule 51 provided one hour for final argument in civil actions.

Advisory Committee's Notes
1986

Rule 80L is added simultaneously with the amendment of M.R.S.C.P. 11 to provide a procedure in the Superior Court for appeals in small claims actions by jury trial de novo as constitutionally required by the recent decision of the Law Court in *Ela v. Pelletier,* 495 A.2d 1225 (Me. 1985).

Rule 80L(a) provides that the Maine Rules of Civil Procedure apply to jury trials de novo in small claims appeals only when specifically recited in this rule. The provision differs from that of other special rule--for example, Rules 80(a), 80A(a), 80B(a)--which make the Rules of Civil Procedure generally applicable to the special proceedings which they govern unless expressly made inapplicable. This difference is necessary because of the need to make these appeals as simple as possible, consistent with the provision of the Small Claims Act, 14 M.R.S.A. § 7481, that the purpose of the Act is to provide "a simple, speedy, and informal court procedure for the resolution of small claims."

Rule 80L(b) provides that the provisions of Rules 5, 6, 7(b), 11 and 15(b) concerning service and filing of papers, time periods, motions, and amendments to conform to the evidence apply to jury trials de novo "so far as applicable." These are necessary housekeeping rules. The rule specifies notice by ordinary mail to the defendant in order to make clear that the requirement of 14 M.R.S.A. § 7484(l) for registered or certified mail service by the clerk does not apply. Defendant is now

the moving party. The provisions of Rules 3-4B covering commencement of action and service of process are not made applicable, because the appeal is commenced in the Superior Court by filing the notice of appeal with notification to the appellee and original service of process occurs at the District Court level at the outset of the small claims action.

The rule also does not incorporate the remaining provisions of Rule 7 and Rules 8-37, covering pleading, parties, and discovery. These rules either have their equivalents at the initial procedural stages in the District Court or introduce procedural complexities that are inappropriate to the simplicity requisite in a small claims action. The principal effect of these omissions is that there is no pleading of any kind in the Superior Court, and there are no counterclaims, complex party practice, or discovery devices available.

Rule 80L(c)(1) provides a special pretrial screening procedure intended to weed out cases in which the jury demand is frivolously or unwarrantedly made. The procedure is analogous to a summary judgment motion under Rule 56, but it operates automatically and the burden is on defendant to show that a genuine issue of material fact exists, and that there is a right to jury trial on that issue. Under M.R.S.C.P. 11(d)(2), defendant must file with his jury demand an affidavit setting forth specific facts showing that such an issue exists. That affidavit becomes part of the record on appeal under M.R.S.C.P. 11(d)(4). The plaintiff has 10 days after mailing of notification of receipt of the record in the Superior Court to file counteraffidavits, as well as a statement of the grounds of any duly filed cross appeal. The timetable is designed to let plaintiff base his response on the whole record. After the period for filing counteraffidavits has passed, the court automatically reviews the affidavits and record without hearing to determine whether a triable issue exists.

Under Rule 80(c)(2), if the court finds that there is an issue for trial, the court either may direct the clerk to place the action directly on the general jury trial list or a special small claims jury trial list or may order further pretrial proceedings. These proceedings may be either pretrial memoranda on specific information which the judge feels is required in the circumstances, or a pretrial conference, or both. The judge is to shape the procedure to the needs of the situation rather than follow the elaborate requirements of Rule 16. After pre-trial proceedings are concluded, the clerk places the action on the trial list as in a case in which no pretrial proceedings were ordered. Assignment for trial thereafter under Rule 40(a) is at the direction of the court. It may be assumed that, consistent with the statutory purpose of the small claims procedure, the Chief Justice of the Superior

Court will, by administrative action, provide for the expeditious trial assignment of small claims appeals. Paragraph (2) further provides that neither party may offer evidence on the trial de novo that was not offered in District Court unless a list of such evidence has been filed by a party 10 days after placement on the jury list, or prior to pretrial proceedings if they are held. The opposing party may file in reply within 10 days or as ordered by the court.

Under Rule 80L(c)(3), if the court finds no triable issue, the appeal will be dismissed and remanded for judgment in the District Court, unless an independent question of law has been presented in the grounds stated by the defendant in the notice of appeal or filed thereafter by plaintiff. In that event, if the court on preliminary review finds that the issue is a material one, the appeal proceeds under M.R.S.C.P. 11 as an ordinary small claims appeal on a question of law. For example, if in an appeal from a judgment on a consumer note, defendant offers the defenses of an offer to pay $5.00 per week and the statute of frauds, the court might dismiss the appeal as to the first defense on the facts that find legal issues raised by the second defense that required hearing. This approach reflects the view that the only right provided by *Ela v. Pelletier*, *supra*, is to a retrial by jury, not to a second court trial.

Rule 80L(c)(4) is a simplified version of Rule 39(a). (Rules 38, 39(b)-(d) are not applicable.) An action placed upon a jury trial list will be tried to a jury unless, thereafter, the defendant withdraws his jury demand or the court, at any time on its own motion, finds that there is no right to jury trial on any issue. If the court finds that there is a jury right on one issue but not on others, all issues will nevertheless go to the jury, because it is simpler to put the entire case to the jury then provide the bifurcated trial that technically would be required in a case containing both jury and non-jury issues. *See* 1 Field, McKusick & Wroth, *Maine Civil Practice*, §38.2 (2d ed. 1970). There is no right to a trial without jury. Under Rule 80L(c)(4), if the action is not to be tried to a jury for any reason, the appeal is either dismissed or carried forward for determination of an independent question of law, as appropriate, under paragraph (3).

Under Rule 80L(c)(5), Rules 40(b) and (c) apply to continuances. Rule 41 governing voluntary and involuntary dismissal is necessary for appropriate disposition. *See* M.R.S.C.P. 9(b). Rule 42 is made inapplicable to avoid complexity at the Superior Court level. Any appropriate consolidation or separation should have occurred in the District Court under M.R.S.C.P. 6(c).

Rule 80L(c)(6) provides that evidentiary provisions of Rules 43, 44, 44A, 45 and 46 apply to jury trials de novo in small claim appeals, as do the Maine Rules of Evidence. This provision differs from that of M.R.S.C.P. 6(b) under which the only applicable rules of evidence are those governing privileges, and the court has broad discretion to receive relevant, unprivileged evidence and exclude irrelevant evidence. The more formal and stringent provisions of the Civil and Evidence Rules governing order of trial and admission of evidence have been made applicable, because their very purpose is to aid in the fair and efficient conduct of proceedings before a jury.

Under Rule 80L(c)(7) the provisions of Rules 47 and 48 governing jury selection and verdict, as well as those of Rule 50 governing motions for directed verdict and judgment notwithstanding the verdict and Rule 51 governing argument and instruction to the jury, are made applicable. Rule 49, governing special verdicts, and Rule 52, concerning findings of fact, are inapplicable because their complexities are unnecessary. Rule 51(a) is modified to limit closing argument to 15 minutes per side unless the court orders otherwise.

Rule 80L(d)(1) incorporates the provisions of the civil rules covering judgment, costs, relief from judgment, harmless error, stay, and disability of the judge. Note that the Superior Court entry fee required by Rule 54A must be paid in the District Court under M.R.S.C.P. 11(b). The provisions of Rule 56 for summary judgment and Rule 57 for declaratory judgment are omitted as unnecessary. *See* Rule 80L(c)(1).

Rule 80L(d)(2) limits the amount of judgment that may be entered to reflect the jurisdictional limitations of the Small Claims Act, 14 M.R.S.A. §§ 7481, 7482. The limit controls regardless of the size of the jury's verdict. *See* 2 Field, McKusick, and Wroth, *Maine Civil Practice* § 100.2 (2d ed. 1970). This limit is imposed, because to do otherwise would require that the defendant be allowed to amend to add counterclaims.

Rule 80L(d)(3) makes clear that post-judgment interest runs only from the date of the Superior Court judgment and not from the date of the original District Court judgment. This provision reflects the fact that the Superior Court determination, flowing from the trial de novo, is the final judgment for this purpose. Under current law, the post-judgment rate is 15%. 14 M.R.S.A. § 1602-A.

Rule 80L(d)(4) is based on, and identical in effect to the second clause of M.R.S.C.P. 11(f). It is restated here for convenience and completeness.

The provisions of Rules 64-71, governing equitable and other special remedies, deposit in court, offer of judgment, and post-judgment process are omitted as either inappropriately complex or covered in simplified form in the Maine Rules of Small Claims Procedure. *See* M.R.S.C.P. 12.

Rule 80L(e) incorporates Rules 72-76A governing appeals to the Law Court. Such appeals are to be carried out as appeals in other civil actions.

Rule 80L(f) incorporates the housekeeping provisions of Rules 77-79 and 81-91. Rules 80-80I, providing special rules for actions such as divorce, real property actions, review of governmental actions, and separate support and custody, are omitted as obviously inapplicable.